

LAW OFFICES  
**BRODSKY & SMITH, LLC**

MAR 13 2019

9595 WILSHIRE BLVD., SUITE 900  
BEVERLY HILLS, CA 90212

877.534.2590  
FAX 310.247.0160  
www.brodskysmith.com

NEW JERSEY OFFICE  
1310 N. KINGS HIGHWAY  
CHERRY HILL, NJ 08034.  
856.795.7250

NEW YORK OFFICE  
240 MINEOLA BOULEVARD  
MINEOLA, NY 11501  
516.741.4977

PENNSYLVANIA OFFICE  
TWO BALA PLAZA, STE 510  
BALA CYNWYD, PA 19004  
610.667.6200

March 5, 2019

SSA Terminals, LLC Attn: Rob Balov, Facility Contact 700 Pier A Plaza Long Beach, CA 90813	SSA Terminals (Pier A), LLC. c/o Corporation Service Company Which Will Do Business in California as CSC – Lawyers Incorporating Service Agent for Service of Process 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3505
Pier A Berths A88 A96 Attn: Rob Balov, Facility Contact 700 Pier A Plaza Long Beach, CA 90813	SSA Terminals, LLC. c/o Corporation Service Company Which Will Do Business in California as CSC – Lawyers Incorporating Service Agent for Service of Process 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3505
SSA Marine, Inc. Attn: General Counsel 1131 SW Klickitat Way Seattle, WA 98134	SSA Terminals (Long Beach), LLC. c/o Corporation Service Company Which Will Do Business in California as CSC – Lawyers Incorporating Service Agent for Service of Process 2710 Gateway Oaks Drive, Suite 150N Sacramento, CA 95833-3505
Administrator U.S. Environmental Protection Agency Mail Code: 1101A 1200 Pennsylvania Avenue, N.W. Washington, DC 20460	Executive Officer Regional Water Quality Control Board Los Angeles Region 320 West Fourth Street, Suite 200 Los Angeles, CA 90013
Acting Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA 94105	Executive Director State Water Resources Control Board 1001 I Street Sacramento, CA 95814

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky Smith") represents [REDACTED] ("[REDACTED]") a citizen of the State of California. This letter is to give notice that Brodsky Smith, on [REDACTED] behalf, intends to file a civil action against SSA Terminals, LLC and its related entities ("SSA Terminals") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at SSA Terminals' facility located at 700 Pier A Plaza, Long Beach, CA 90813 (the "Facility").

(b)(6) is a citizen of the State of California who is concerned with the environmental health the Long Beach Harbor, and uses and enjoys the waters of the Long Beach Harbor, its inflows, and other areas of the overall San Pedro Bay Watershed, of which the Long Beach Harbor is a part. (b)(6) use and enjoyment of these waters are negatively affected by the pollution caused by SSA Terminals' operations. Additionally, (b)(6) acts in the interest of the general public to prevent pollution in these waterways, for the benefit of their ecosystems, and for the benefits of all individuals and communities who use these waterways for various recreational, educational, and spiritual purposes.

This letter addresses SSA Terminals' unlawful discharge of pollutants from the Facility via indirect flow into the Long Beach Harbor and the overall San Pedro Bay Watershed.<sup>1</sup> Specifically, investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the National Pollutant Discharge Elimination System ("NPDES") General Permit No CAS000001 [State Water Resources Control Board] Water Quality Orders No. 2014-0057-DWQ (the "Industrial Stormwater Permit") and 92-12-DWQ (as amended by Order No. 97-03-DWQ) (the "Previous Industrial Stormwater Permit").<sup>2</sup>

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his or her intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur. As required by section 505(b), this Notice of Violation and Intent to File Suit provides notice to SSA Terminals of the violations that have occurred and which continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and the Intent to File Suit, (b)(6) intends to file suit in federal court against SSA Terminals under CWA section 505(a) for the violations described more fully below.

During the 60-day notice period, (b)(6) is willing to discuss effective remedies for the violations noticed in this letter. We suggest that SSA Terminals contact (b)(6) attorneys at Brodsky & Smith within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, and service of the complaint shortly thereafter, even if discussions are continuing when the notice period ends.

## **I. THE LOCATION OF THE ALLEGED VIOLATIONS**

### **A. The Facility**

SSA Terminals' Facility is located at 700 Pier A Plaza, Long Beach, CA 90813. At the Facility, SSA Terminals operates as a cargo ship unloading area and large shipping container storage yard. At the Facility, the following industrial activities occur: (i) cargo ship loading/unloading; (ii) container loading/unloading; (iii) container storage; (iii) container and equipment washing; and (iv) container and equipment repair. Other activities carried out in the regular course of business at the facility include storage of fuel and other oils, maintenance, equipment storage, and waste storage. Repair and maintenance activities carried out at the facility include, but are not limited to, electrical, plumbing, roofing, asphalt, concrete, and utilities repairs as well as janitorial duties. Possible pollutants from the Facility include total suspended solids ("TSS"), waste oils, lubricants, fuel, trash, debris, hazardous materials, oil and grease ("O&G"), pH, heavy metals such as iron, aluminum, lead, copper, and zinc, as well as other pollutants. Stormwater from the Facility discharges, indirectly, into the Long Beach Harbor.

---

<sup>1</sup> SSA Terminals' Notice of Intent ("NOI") filed with the Los Angeles Regional Water Quality Control Board ("LARWQCB") lists the receiving waters of the Facility as the "Long Beach Harbor" via indirect flow. Upon investigation, it is (b)(6) knowledge and belief that the most immediate receiving water of the Facility is the Long Beach Harbor, via indirect flow, and that the Long Beach Harbor is a part of the San Pedro Bay Watershed, which thereafter flows into the Pacific Ocean.

<sup>2</sup> On April 1, 2014, the State Water Resources Control Board adopted an updated NPDES General Permit for Discharges Associated with Industrial Activity, Water Quality Order No. 2014-57-DWQ, which has taken force or effect on its effective date of July 1, 2015. As of the effective date, Water Quality Order No. 2014-57-DWQ has superseded and rescinded the prior Industrial Stormwater Permit except for purposes of enforcement actions brought pursuant to the prior permit.

## **B. The Affected Water**

The Long Beach Harbor and overall San Pedro Bay Watershed are waters of the United States. The CWA requires that water bodies such as the Long Beach Harbor and overall San Pedro Bay Watershed meet water quality objectives that protect specific “beneficial uses.” The beneficial uses of the Long Beach Harbor and overall San Pedro Bay Watershed include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the Long Beach Harbor and overall San Pedro Bay Watershed, and threatens the beneficial uses and ecosystem of these watersheds, which includes habitats for threatened and endangered species.

## **II. THE FACILITY’S VIOLATIONS OF THE CLEAN WATER ACT**

It is unlawful to discharge pollutants to waters of the United States, such as the Long Beach Harbor, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Industrial Stormwater Permit authorizes certain discharges of stormwater, conditioned on compliance with its terms.

SSA Terminals has submitted a Notice of Intent (“NOI”) to be authorized to discharge stormwater from the Facility under the Industrial Stormwater Permit since as early as 2015.<sup>3</sup> However, information available to Personal Privacy is  
Prohibited indicates that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit and the CWA. Apart from discharges that comply with the Industrial Stormwater Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

### **A. Discharges in Excess of BAT/BCT Levels**

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from the facility in concentrations above the level commensurate with the application of best available technology economically achievable (“BAT”) for toxic pollutants<sup>4</sup> and best conventional pollutant control technology (“BCT”) for conventional pollutants.<sup>5</sup> Industrial Stormwater Permit § I(D)(32), II(D)(2); Previous Industrial Stormwater Permit, Order Part B(3). The EPA has published Benchmark values set at the maximum pollutant concentration present if an industrial facility is employing BAT and BCT, as listed in Attachment 1 to this letter.<sup>6</sup> These benchmark values are reiterated and incorporated into the Industrial Stormwater Permit. *See* Industrial Stormwater Permit § XI(B) Tables 1-2.

Additionally, the Previous Industrial Stormwater Permit notes that effluent limitation guidelines for several named industrial categories have been established and codified by the Federal Government. *See* Previous Industrial Stormwater Permit pp. VIII. The Previous Industrial Stormwater Permit mandates that for facilities that fall within

---

<sup>3</sup> While SSA Terminals’ Water Boards Storm Water Multiple Application & Report Tracking System (“SMARTS”) filer page indicate the earliest application date of April 10, 2015, SSA Terminals LLC has been registered as an LLC with the California Secretary of State since at least July 7, 1999. Moreover, the related entity SSA Terminals (Long Beach), LLC has been registered as an LLC with the California Secretary of State since at least December 19, 2002. If SSA Terminals was operating the Facility between July 7, 1999 or December 19, 2002 and April 10, 2015 without proper coverage under the Industrial Stormwater Permit, such action is violative of the CWA.

<sup>4</sup> BAT is defined at 40 C.F.R. § 437.1 *et seq.* Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

<sup>5</sup> BCT is defined at 40 C.F.R. § 437.1 *et seq.* Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

<sup>6</sup> The Benchmark values are part of the EPA’s Multi-Sector General Permit (“MSGP”) and can be found at: <https://www.epa.gov/npdes/final-2015-msgp-documents>.

such industrial categories, compliance with the listed BAT and BCT for the specified pollutants listed therein must be met in order to be in compliance with the Previous Industrial Stormwater Permit. *Id.* SSA Terminals falls within these named industrial categories and it must have complied with the effluent limitations found therein in order to have been in compliance with the Previous Industrial Stormwater Permit during its effective period. In addition, the Industrial Stormwater Permit requires dischargers to comply with Effluent Limitations “consistent with U.S. EPA’s Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the “MSGP”)”. See Industrial Stormwater Permit § I(D)(33). The MSGP has specific numeric effluent limitations based upon Standard Industrial Classification (“SIC”) codes. Furthermore, these SIC code based benchmark values are reiterated and incorporated into the Industrial Stormwater Permit. See Industrial Stormwater Permit § XI(B) Tables 1-2.<sup>7</sup> Notably, SSA Terminals is classified as falling under SIC Code 4491, relating to marine cargo handling, requiring it to be within numerical effluent limitations for (i) pH; (ii) Oil and Grease; (iii) Total Suspended Solids; (iv) Total Zinc; (v) Total Iron; (vi) Total Aluminum; and (vii) Total Lead. SSA Terminals also tests for the additional pollutant parameters of (viii) Copper based on the total maximum daily load (“TMDL”) of the receiving water. Based on SSA Terminals’ self-reporting data and/or lack thereof, SSA Terminals has not met this requirement and was in violation of the Previous Stormwater Permit over a period of approximately at least the past four (4) years.

SSA Terminals self-reporting of industrial stormwater discharges and/or lack thereof show a pattern of exceedances of Benchmark values and/or a failure to adequately monitor numerical pollutant discharge values in every instance of self-reporting. See Attachment 2. This pattern of a exceedances of benchmark values and/or a lack of self-reporting indicate that SSA Terminals has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial Stormwater Permit and Previous Industrial Stormwater Permit. Personal Privacy Act (b)(6) alleges and notifies SSA Terminals that its stormwater discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed benchmark values for TSS, Zinc, Iron, Aluminum, and/or Copper, including annual and/or instantaneous NAL overages for all such parameters within the last four (4) annual reporting periods including the current 2018-2019 period.

SSA Terminals’ ongoing discharges of stormwater containing levels of pollutants above EPA Benchmark values and BAT and BCT based levels of control also demonstrate that SSA Terminals has not developed and implemented sufficient Best Management Practices (“BMPs”) at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors capturing and effectively filtering or otherwise treating all stormwater prior to discharge, frequent sweeping to reduce build-up of pollutants on-site, installing filters on downspouts and storm drains, and other similar measures.

SSA Terminals’ failure to develop and/or implement adequate pollution controls to meet BAT and BCT and the Facility violates and will continue to violate the CWA and the Industrial Stormwater Permit each and every day SSA Terminals’ discharges stormwater without meeting BAT/BCT. Personal Privacy Act (b)(6) alleges that SSA Terminals has discharged stormwater containing excessive levels of pollutants from the Facility to the Long Beach Harbor during at least every significant local rain event over 0.1 inches in at least the last four (4) years.<sup>8</sup> Attachment 3 compiles all dates in at least the last four (4) years when a significant rain event occurred. SSA Terminals is subject to civil penalties for each violation of the Industrial Stormwater Permit and the CWA within at least the past four (4) years.

## **B. Discharges Impairing Receiving Waters**

The Industrial Stormwater Permit’s Discharge Prohibitions disallow stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. See Industrial Stormwater Permit § III; Previous Industrial Stormwater Permit, Order Part A(2). The Industrial Stormwater Permit also prohibits stormwater discharges to surface or groundwater that adversely impact human health or the environment. See Industrial Stormwater Permit § VI(b)-(c); Previous Industrial Stormwater Permit, Order Part C(1). Receiving Water Limitations of the Industrial Stormwater Permit prohibit stormwater discharges that cause or contribute to an exceedance of applicable Water

<sup>7</sup> Of note, SSA Terminals acknowledges this requirement in their most current Stormwater Pollution Prevention Plan (“SWPPP”), at Section “Monitoring Implementation Plan”, at Appendix F.

<sup>8</sup> Significant local rain events are reflected in the rain gauge data available at: <http://www.ncdc.noaa.gov/cdo-web/search>.



Quality Standards ("WQS") contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan. *See* Industrial Stormwater Permit § VI(a); Previous Industrial Stormwater Permit at Order Part C(2). Applicable WQS are set forth in the California Toxic Rule ("CTR")<sup>9</sup> and Chapter 3 of the Los Angeles Region (Region 4) Water Quality Control Plan (the "Basin Plan").<sup>10</sup> Exceedances of WQS are violations of the Industrial Stormwater Permit, the CTR, and the Basin Plan.

The Basin Plan establishes WQS for all Inland Surface and Coastal waters of Los Angeles and Ventura Counties, including but not limited to the following:

- Waters shall not contain suspended or settleable material in concentrations that cause nuisance or adversely affect beneficial users.
- Waters shall be free of changes in turbidity that cause nuisance or adversely affect beneficial uses. Increases in natural turbidity attributable to controllable water quality factors shall not exceed 20% where natural turbidity is between 0 and 50 nephelometric turbidity units ("NTU"), and shall not exceed 10% where the natural turbidity is greater than 50 NTU.
- All waters shall be maintained free of toxic substances in concentrations that are toxic to, or that produce detrimental physiological responses in, human, plant, animal, or aquatic life.
- Surface waters shall not contain concentrations of chemical constituents in amounts that adversely affect any designated beneficial use.

██████████ alleges that SSA Terminals' stormwater discharges have caused or contributed to exceedances of Receiving Water Limitations in the Industrial Stormwater Permit and the WQS set forth in the Basin Plan and CTR. These allegations are based on SSA Terminals' self-reported data submitted to the Los Angeles Regional Water Quality Control Board. These sampling results indicate that SSA Terminals' discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impacting human health or the environment; and violating applicable WQS.

██████████ alleges that each day that SSA Terminals has discharged stormwater from the Facility, SSA Terminals' stormwater has and/or may have contained levels of pollutants that exceeded one or more of the Receiving Water Limitations and/or applicable WQS in the Long Beach Harbor and overall San Pedro Bay Watershed. ██████████ alleges that SSA Terminals has discharged stormwater exceeding Receiving Water Limitations and/or WQS from the Facility to the Long Beach Harbor and overall San Pedro Bay Watershed during at least every significant local rain event over 0.1 inches in the last four (4) years. *See* Attachment 3. Each discharge from the Facility that violates a Receiving Water Limitation or has caused or contributed, or caused or contributes, to an exceedance of an applicable WQS constitutes a separate violation of the Industrial Stormwater Permit and the CWA. SSA Terminals is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA within at least the past four (4) years.

### **C. Failure to Develop and Implement an Adequate Stormwater Pollution Prevention Plan**

The Industrial Stormwater Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). *See* Industrial Stormwater Permit, § X(B); Previous Industrial Stormwater Permit § A(1)(a). The Industrial Stormwater Permit also requires dischargers to make all necessary revisions to existing SWPPPs promptly. *See* Industrial Stormwater Permit, § X(B); Previous Industrial Stormwater Permit at Order Part E(2).

---

<sup>9</sup> The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000).

<sup>10</sup> The Basin Plan is published by the Los Angeles Regional Water Quality Control Board at: [http://www.waterboards.ca.gov/losangeles/water\\_issues/programs/basin\\_plan/basin\\_plan\\_documentation.shtml](http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/basin_plan_documentation.shtml).

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all SSA Terminals pollutant sources, a description of the BMPs that will reduce or prevent pollutants in stormwater discharges, specification of BMPs designed to reduce pollutant discharge to BAT and BCT levels, a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP within 90 days after a facility manager determines that the SWPPP is in violation of any requirements of the Industrial Stormwater Permit. *See* Industrial Stormwater Permit, § X(A); Previous Industrial Stormwater Permit Section § A.

Based on information available to [REDACTED], SSA Terminals has failed to prepare and/or implement an adequate SWPPP and/or failed to revise the SWPPP to satisfy each of the requirements of § X(A) of the Industrial Stormwater Permit and/or § A Previous Industrial Stormwater Permit. For Example, SSA Terminals SWPPP does not include and/or SSA Terminals has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with Section A(8) of the Industrial Stormwater Permit, as evidenced by the data in Attachment 2.

Accordingly, SSA Terminals has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of § X(A) of the Industrial Stormwater Permit and/or § A Previous Industrial Stormwater Permit, and SSA Terminals will continue to be in violation every day until it develops and implements an adequate SWPPP. SSA Terminals is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring within at least the past four (4) years.

**D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program and to Perform Annual Comprehensive Site Compliance Evaluations**

The Industrial Stormwater Permit requires facility operators to develop and implement a Monitoring and Reporting Program ("MRP"). *See* Industrial Stormwater Permit, § XI; Previous Industrial Stormwater Permit § B(1) and Order Part E(3). The Industrial Stormwater Permit requires that MRP ensure that each the facility's stormwater discharges comply with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial Stormwater Permit. *Id.* Facility operators must ensure that their MRP practices reduce or prevent pollutants in stormwater and authorized non-stormwater discharges as well as evaluate and revise their practices to meet changing conditions at the facility. *Id.* This may include revising the SWPPP as required by § X(A) of the Industrial Stormwater Permit and/or § A Previous Industrial Stormwater Permit.

The MRP must measure the effectiveness of BMPs used to prevent or reduce pollutants in stormwater and authorized non-stormwater discharges, and facility operators must revise the MRP whenever appropriate. *See* Industrial Stormwater Permit, § XI; Previous Industrial Stormwater Permit § at Section B. The Industrial Stormwater Permit requires facility operators to visually observe and collect samples of stormwater discharges from all drainage areas. *Id.* Facility operators are also required to provide an explanation of monitoring methods describing how the facility's monitoring program will satisfy these objectives. *Id.*

SSA Terminals has been operating the Facility with an inadequately developed and/or inadequately implemented MRP, in violation of the substantive and procedural requirements set forth in Section B of the Industrial Stormwater permit. For example, the data in Attachment 2 indicates that SSA Terminals' monitoring program has not ensured that stormwater dischargers are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial Stormwater Permit as required by the Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B. The monitoring has not resulted in practices at the Facility that adequately reduce or prevent pollutants in stormwater as required by Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B. Additionally, the Industrial Stormwater Permit requires dischargers to comply with Effluent Limitations "consistent with U.S. EPA's Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "MSGP")". The MSGP has specific numeric effluent limitations based upon Standard Industrial Classification ("SIC") codes. Furthermore, these SIC code based benchmark values are reiterated and incorporated into the Industrial Stormwater Permit. *See* Industrial Stormwater Permit § XI(B) Tables 1-2. Notably, SSA Terminals is classified as falling under SIC Code 4491, relating to marine cargo handling, requiring it to be within numerical effluent limitations for (i) pH; (ii) Oil and Grease; (iii) Total Suspended Solids; (iv) Total Zinc; (v) Total Iron; (vi) Total Aluminum; and (vii) Total Lead. SSA Terminals also tests for the additional pollutant parameter of (viii) Copper based on the TMDL of the receiving water. As previously stated, and in clear violation of

the terms of the Industrial Stormwater Permit, SSA Terminals has consistently reported benchmark exceedances and/or failed to report testing results for any applicable effluent limitation in their annual reports for the past four (4) annual reporting periods. *See* Attachments 2, 3. Therefore, the data in Attachment 2 indicates that SSA Terminals' monitoring program has not effectively identified or responded to compliance problems at the Facility or resulted in effective revision of the BMPs in use or the Facility's SWPPP to address such ongoing problems as required by Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B.

As a part of the MRP, the Industrial Stormwater Permit specifies that Facility operators shall collect a total of four (4) stormwater samples throughout an annual reporting period. Specifically the Industrial Stormwater Permit requires, "The discharger to collect and analyze samples from two (2) Qualifying Storm Events ("QSEs") within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30)." Industrial Stormwater Permit § XI B(2).<sup>11</sup> Furthermore, should facility operators fail to collect samples from the first storm event of the wet season, they are still required to collect samples from two other storm events during the wet season, and explain in the annual report why the first storm event was not sampled. *Id.* Despite this requirement SSA Terminals has failed to submit two (2) QSEs for the first half of the 2017-2018 annual reporting period, as required under the Industrial Stormwater Permit. SSA Terminals has not submitted adequate explanations for such inadequate and insufficient data.

The Industrial Stormwater Permit also requires dischargers to include laboratory reports with their Annual Reports submitted to the Regional Board. *See* Industrial Stormwater Permit, Fact Sheet § O and/or Previous Industrial Stormwater Permit § B(14). Notably, SSA Terminals has submitted laboratory reports for the 2017-2018 annual reporting period showing testing for less than the required complete two (2) QSEs in the first half of the annual reporting period, as required under the Industrial Stormwater Permit. SSA Terminals has not submitted adequate explanations for such missing data.

As a result of SSA Terminals' failure to adequately develop and/or implement an adequate MRP at the Facility, SSA Terminals has been in daily and continuous violation of the Industrial Stormwater Permit and the CWA each and every day for at least the past three (3) years. These violations are ongoing. SSA Terminals will continue to be in violation of the monitoring and reporting requirement each day that SSA Terminals fails to adequately develop and/or implement an effective MRP at the Facility. SSA Terminals is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for at least the last three (3) years.

#### **E. Failure to Comply with Level 1 and Level 2 Exceedance Response Action Requirements**

When the Industrial Stormwater Permit became effective on July 1, 2015, all permitted facilities were placed into "baseline status" for all parameters listed in Table 2 of the Industrial Stormwater Permit. Industrial Stormwater Permit § XII(B). Permitted facilities are placed into "Level 1 Status" if sampling indicates that an annual or instantaneous NAL exceedance for an applicable pollutant parameter has occurred. Industrial Stormwater Permit § XII(C). Level 1 status commences on July 1 following the reporting year during which the NAL exceedance(s) occurred, and the discharger enters the Exceedance Response Action ("ERA") process. *Id.* The ERA process requires the discharger to conduct an evaluation, assisted by a Qualified Industrial Storm Water Practitioner (a "QISP"), of the industrial pollutant sources at the facility that are or may be related to the NAL exceedance(s) by October 1 following the commencement of Level 1 Status. *Id.* The evaluation must also include the identification of the "corresponding BMPs in the SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL exceedances and to comply with the requirements of the General Permit." *Id.* Furthermore, the Industrial Stormwater Permit states, "Although the evaluation may focus on the drainage areas where the NAL exceedance(s) occurred, all drainage areas shall be evaluated." *Id.* If such remediation is not effective, and NAL exceedances for the affected pollutant parameter

---

<sup>11</sup> Under the Previous Industrial Stormwater Permit, only two samplings per year was required, specifically, from "the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season." *See* Previous Industrial Stormwater Permit § B(5)(a). Of note, SSA Terminals acknowledge this requirement in their most current SWPPP, Appendix F.

occurs for a second consecutive annual reporting period, the Facility is placed into “Level 2” status, requiring further remediation, analysis, reporting, and action. *Id.*

Based upon Level 1 and Level 2 status evaluations, a discharger is required, as soon as practicable but no later than January 1 following the commencement of Level 1 or Level 2 status, to prepare a Level 1 ERA Report, Level 2 ERA Action Plan, or Level 2 ERA Technical Report, as applicable. Industrial Stormwater Permit § XII(C)(2). The Level 1 ERA Report, Level 2 ERA Action Plan, and/or Level 2 ERA Technical Reports must be prepared by a QISP and include a summary of the Level 1 and/or Level 2 ERA evaluation(s) and a detailed description of the SWPPP revisions and any additional BMPs for each parameter that exceeded an NAL. *Id.* The SWPPP revisions and additional BMP development and implementation must also be completed by January 1 following the commencement of Level 1 and/or Level 2 status, and the Level 1 or Level 2 status discharger is required to submit via SMARTS the Level 1 ERA Report, Level 2 ERA Action Plan, or Level 2 ERA Technical Report certifying the evaluation or report has been conducted, and SWPPP revisions and BMP implementation have been completed. *Id.* The certification is also required to provide the QISP’s identification number, name, and contact information no later than January 1 following commencement or continuation of Level 1 or Level 2 status. *Id.*

A permitted discharger’s Level 1 status for a parameter will return to Baseline status if a Level 1 ERA Report, Level 2 ERA Action Plan, or Level 2 ERA Technical Report has been completed, all identified additional BMPs have been implemented, and results from four (4) consecutive QSEs that were sampled subsequent to BMP implementation indicate no additional NAL exceedances for that parameter. Industrial Stormwater Permit § XII(C)(D). A permitted discharger will enter “Level 2 status” if there are any NAL exceedances for the same parameter when the discharger is in Level 1 status. Industrial Stormwater Permit § XII(D).

SSA Terminals’ Facility had NAL annual average exceedances for TSS, Aluminum, Copper, Iron, and Zinc, during the 2015-2016 Annual Reporting period that resulted in Level 1 status for those pollutant parameters at the Facility. The additional BMPs identified in SSA Terminals’ submitted Level 1 ERA Report were to be completed “As Soon as Possible” as per the Level 1 ERA Report completed on December 6, 2016, however sampling conducted by SSA Terminals throughout the 2016-2017 Annual Reporting period indicated that the facility continued to discharge stormwater containing impermissibly high levels of Zinc, Iron, Aluminum, and Copper, putting the Facility into Level 2 status for those pollutant parameters. In sum, rather than conducting a thorough evaluation to identify the BMPs in the SWPPP that correspond to the NAL exceedances at the Facility, and identify what additional BMPs are needed to prevent future NAL exceedances, SSA Terminals submitted an inadequate Level 1 ERA report that was ineffective and did not comply with the Industrial Stormwater Permit and has led to further NAL overages. Thereafter the Facility outlined additional BMPs identified in SSA Terminals’ submitted December 13, 2017, Level 2 ERA Action Plan, which indicated that such additional BMPs were implemented as of November 20, 2017.

However, at the conclusion of the 2017-2018 Annual Reporting Period, SSA Terminals continued to have annual NAL overages for the pollutant parameters of Zinc, Iron, Aluminum, and Copper. Moreover, SSA Terminals continued testing in the 2018-2019 Annual Reporting Period shows a similar pattern of NAL annual overages for the same pollutant parameters. Notably, SSA Terminals has not submitted a Level 2 Technical Report as is required for continued NAL Annual overages while in Level 2 for pollutant parameters.

As a result of SSA Terminals’ failure to adequately develop, implement, and/or submit adequate Level 1 ERA Report, Level 2 ERA Action Plan, and/or Level 2 ERA Technical Report the Facility, SSA Terminals has been in daily and continuous violation of the Industrial Stormwater Permit and the CWA each and every day for the, 2016-2017, 2017-2018 and 2018-2019 annual reporting period, continuing a pattern of violations stretching back at least four (4) years. These violations are ongoing. SSA Terminals will continue to be in violation of the monitoring and reporting requirement each day that SSA Terminals fails to adequately develop and/or implement an effective BMPs at the Facility. SSA Terminals is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for the last four (4) years.

## **F. Unpermitted Discharges**

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES Permit issued pursuant to Section 402 of the CWA. *See* 33 U.S.C. §§ 1311(a), 1342. SSA Terminals sought coverage for the Facility under the Industrial Stormwater Permit, which states that any



discharge from an industrial facility not in compliance with the Industrial Stormwater Permit “must be either eliminated or permitted by a separate NPDES permit.” Industrial Stormwater Permit, § III; Previous Industrial Stormwater Permit, Order Part A(1). Because SSA Terminals has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial Stormwater Permit, each and every discharge from the Facility described herein not in compliance with the Industrial Stormwater Permit has constituted and will continue to constitute a discharge without CWA Permit coverage in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a)

#### IV. PERSON RESPONSIBLE FOR THE VIOLATIONS

SSA Terminals LLC, SSA Terminals (Long Beach) LLC, and/or SSA Terminals (Pier A) LLC are the person responsible of the violations at the Facility described above.

#### V. NAME AND ADDRESS OF NOTICING PARTY

Personal Privacy ex. (b)(6)  
Personal Privacy ex. (b)(6)  
Personal Privacy ex. (b)(6)  
Personal Privacy ex. (b)(6)

#### VI. COUNSEL

Evan J. Smith, Esquire  
esmith@brodskysmith.com  
Ryan P. Cardona, Esquire  
rcardona@brodskysmith.com  
Brodsky & Smith, LLC  
9595 Wilshire Blvd., Suite 900  
Beverly Hills, CA 90212  
T: (877) 534-2590  
F: (310) 247-0160

#### VII. REMEDIES

Personal Privacy ex. (b)(6) intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against SSA Terminals for the above-referenced violations. Personal Privacy ex. (b)(6) will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, Personal Privacy ex. (b)(6) will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against SSA Terminals in this action. The CWA imposes civil penalty liability of up to \$51,570 per day per violation for violations occurring after November 2, 2015, and \$37,500 per day per violation for violations occurring after January 12, 2009 but before November 2, 2015. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. Personal Privacy ex. (b)(6) will seek to recover attorneys’ fees, experts’ fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

As noted above, [REDACTED] and his Counsel are willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me to initiate these discussions.

Sincerely,



Evan J. Smith, Esquire  
esmith@brodskysmith.com  
Ryan P. Cardona, Esq.  
rcardona@brodskysmith.com  
Brodsky & Smith, LLC  
9595 Wilshire Boulevard, Suite 900  
Beverly Hills, CA  
T: (877) 534-2590  
F: (310) 247-0160

**ATTACHMENT 1: EPA BENCHMARKS, WATER QUALITY STANDARDS FOR DISCHARGES, &  
PARAMETER NAL VALUES**

**EPA Benchmarks/Parameter NAL Values, Multi-Sector General Permit ("MSGP") & IGP**

<b>Parameter</b>	<b>Units</b>	<b>Benchmark Value</b>	<b>Source</b>
pH	pH Units	Less than 6.0 Greater than 9.0 (Instantaneous)	MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Oil & Grease	Mg/L	25 (Instantaneous) 15 (Annual)	MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Total Suspended Solids	Mg/L	400 (Instantaneous) 100 (Annual)	MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Zinc, Total	Mg/L	0.26** (Annual)	MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Aluminum, Total	Mg/L	0.75 (Annual)	MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Iron, Total	Mg/L	1.0 (Annual)	MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Lead, Total	Mg/L	0.262** (Annual)	MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2
Copper, Total	Mg/L	0.0332** + (Annual)	MSGP; Industrial Stormwater Permit § XI(B) Tables 1-2

\*\* The NAL is the highest value used by the U.S. EPA based on their water hardness.

+ While not an SIC required Pollutant Parameters, SSA Terminals tests for Copper based on the TMDL of the receiving water.

**ATTACHMENT 2: TABLE OF EXCEEDENCES FOR  
SSA TERMINALS**

The following table contains each stormwater sampling result which exceeds EPA Benchmarks and/or causes or contributes to an exceedance of CFR and/or Basin Plan Water Quality Standards. All EPA Benchmarks and CFR and/or Basin Plan Water Quality Standards are listed in Attachment 1. All stormwater samples were reported by the Facility during the past four (4) years.

Reporting Period	Sample Date	Parameter	Result	Unit
2015-2016	09/15/2015	Copper	0.04	Mg/L
2015-2016	09/15/2015	Zinc	0.54	Mg/L
2015-2016	09/15/2015	Aluminum	2.4	Mg/L
2015-2016	09/15/2015	Copper	0.14	Mg/L
2015-2016	09/15/2015	Iron	4.8	Mg/L
2015-2016	09/15/2015	Zinc	1.7	Mg/L
2015-2016	12/11/2015	TSS	140	Mg/L
2015-2016	12/11/2015	Aluminum	3.4	Mg/L
2015-2016	12/11/2015	Copper	0.21	Mg/L
2015-2016	12/11/2015	Iron	6.0	Mg/L
2015-2016	12/11/2015	Zinc	2.0	Mg/L
2015-2016	12/11/2015	TSS	130	Mg/L
2015-2016	12/11/2015	Aluminum	3.8	Mg/L
2015-2016	12/11/2015	Copper	0.26	Mg/L
2015-2016	12/11/2015	Iron	7.0	Mg/L
2015-2016	12/11/2015	Zinc	4.6	Mg/L
2015-2016	12/11/2015	TSS	320	Mg/L
2015-2016	01/06/2016	Aluminum	3.6	Mg/L
2015-2016	01/06/2016	Copper	0.1	Mg/L
2015-2016	01/06/2016	Iron	10.0	Mg/L
2015-2016	01/06/2016	Zinc	0.86	Mg/L
2015-2016	12/11/2015	TSS	140	Mg/L
2015-2016	01/06/2016	Aluminum	3.7	Mg/L
2015-2016	01/06/2016	Copper	0.12	Mg/L
2015-2016	01/06/2016	Iron	7.5	Mg/L
2015-2016	01/06/2016	Zinc	2.5	Mg/L
2015-2016	03/07/2016	Aluminum	1.5	Mg/L
2015-2016	03/07/2016	Copper	0.06	Mg/L
2015-2016	03/07/2016	Iron	4.4	Mg/L
2015-2016	03/07/2016	Zinc	0.73	Mg/L
2015-2016	03/07/2016	Aluminum	0.86	Mg/L
2015-2016	03/07/2016	Iron	1.7	Mg/L
2015-2016	03/07/2016	Zinc	3.0	Mg/L
2016-2017	11/21/2016	Aluminum	1.1	Mg/L
2016-2017	11/21/2016	Copper	0.05	Mg/L
2016-2017	11/21/2016	Iron	2.1	Mg/L
2016-2017	11/21/2016	Zinc	0.56	Mg/L
2016-2017	11/21/2016	Iron	1.2	Mg/L
2016-2017	11/21/2016	Zinc	1.4	Mg/L
2016-2017	12/16/2016	TSS	100	Mg/L
2016-2017	12/16/2016	Aluminum	2.1	Mg/L
2016-2017	12/16/2016	Copper	0.06	Mg/L
2016-2017	12/16/2016	Iron	4.0	Mg/L
2016-2017	12/16/2016	Zinc	0.52	Mg/L
2016-2017	12/16/2016	Aluminum	3.1	Mg/L



2016-2017	12/16/2016	Copper	0.06	Mg/L
2016-2017	12/16/2016	Iron	6.6	Mg/L
2016-2017	12/16/2016	Zinc	2.6	Mg/L
2016-2017	01/09/2017	Zinc	0.36	Mg/L
2016-2017	02/07/2017	Aluminum	1.4	Mg/L
2016-2017	02/07/2017	Iron	2.4	Mg/L
2016-2017	02/07/2017	Zinc	0.27	Mg/L
2016-2017	02/07/2017	Aluminum	0.94	Mg/L
2016-2017	02/07/2017	Iron	1.8	Mg/L
2016-2017	02/07/2017	Zinc	0.54	Mg/L
2017-2018	01/09/2018	Aluminum	2.6193	Mg/L
2017-2018	01/09/2018	Copper	0.0964	Mg/L
2017-2018	01/09/2018	Iron	6.0767	Mg/L
2017-2018	01/09/2018	Zinc	0.8825	Mg/L
2017-2018	01/09/2018	Aluminum	2.0533	Mg/L
2017-2018	01/09/2018	Copper	0.0465	Mg/L
2017-2018	01/09/2018	Iron	4.7292	Mg/L
2017-2018	01/09/2018	Zinc	2.5619	Mg/L
2017-2018	03/22/2018	Copper	0.0433	Mg/L
2017-2018	03/22/2018	Zinc	0.3666	Mg/L
2017-2018	03/22/2018	Zinc	1.1275	Mg/L
2018-2019	10/13/2018	Aluminum	0.8185	Mg/L
2018-2019	10/13/2018	Copper	0.0489	Mg/L
2018-2019	10/13/2018	Iron	1.5943	Mg/L
2018-2019	10/13/2018	Zinc	0.4135	Mg/L
2018-2019	11/29/2018	Aluminum	4.3085	Mg/L
2018-2019	11/29/2018	Copper	0.0757	Mg/L
2018-2019	11/29/2018	Iron	8.152	Mg/L
2018-2019	11/29/2018	Zinc	1.1421	Mg/L
2018-2019	11/29/2018	Aluminum	1.218	Mg/L
2018-2019	11/29/2018	Iron	2.1988	Mg/L
2018-2019	11/29/2018	Zinc	0.9956	Mg/L
2018-2019	01/21/2019	Iron	1.7562	Mg/L
2018-2019	01/21/2019	Zinc	0.6843	Mg/L
2018-2019	01/31/2019	Aluminum	1.5128	Mg/L
2018-2019	01/31/2019	Copper	0.1359	Mg/L
2018-2019	01/31/2019	Iron	3.2631	Mg/L
2018-2019	01/31/2019	Zinc	0.4950	Mg/L
2018-2019	01/31/2019	Copper	0.1406	Mg/L
2018-2019	01/31/2019	Iron	1.1065	Mg/L
2018-2019	01/31/2019	Zinc	0.4437	Mg/L
2018-2019	01/31/2019	Aluminum	1.7213	Mg/L
2018-2019	01/31/2019	Copper	0.0354	Mg/L
2018-2019	01/31/2019	Iron	3.6557	Mg/L
2018-2019	01/31/2019	Zinc	0.4064	Mg/L
2018-2019	01/31/2019	TSS	113.0	Mg/L
2018-2019	01/31/2019	Aluminum	2.0302	Mg/L
2018-2019	01/31/2019	Copper	0.0431	Mg/L
2018-2019	01/31/2019	Iron	4.1634	Mg/L
2018-2019	01/31/2019	Zinc	0.5497	Mg/L

\* SSA Terminals has failed to submit testing results or laboratory reports for the requisite two (2) QSEs due for the first half of the 2017-2018 annual reporting period...

\* SSA Terminals has recorded annual average NAL exceedances for TSS, Zinc, Copper, Aluminum, and Iron in the 2015-2016 annual reporting period, annual average NAL exceedances for Aluminum, Iron, and Zinc in the 2016-2017 annual reporting period, annual average NAL exceedances for Aluminum, Copper, Iron, and Zinc in the 2017-2018 annual reporting period, and current testing indicates that it will have annual average NAL exceedances for Aluminum, Copper, Iron, and Zinc in the 2018-2019 annual reporting period.

\* If SSA Terminals has been operating at the facility since 1999, it has been in violation of the CWA for failing to submit a Notice of Intent to Discharge Stormwater until 2015.

\* As indicated above, SSA Terminals has failed to properly comply with the Level 1 and Level 2 ERA requirements to properly address the above listed overages.

**ATTACHMENT 3: ALLEGED DATES OF EXCEEDANCES BY  
SSA TERMINALS  
January 1, 2015 – March 1, 2019**

Days with precipitation one-tenth of an inch or greater, as reported by NOAA's National Climatic Data Center, Stations: Long Beach Daugherty Airport, CA US, USW00023129, when a stormwater discharge from the Facility is likely to have occurred. <http://www.ncdc.noaa.gov/cdo-web/search>

2015	2016	2017	2018	2019
1/10	1/5	1/5	1/8	1/5
1/11	1/6	1/9	1/9	1/7
1/26	1/7	1/10	2/26	1/12
2/22	1/31	1/11	3/2	1/14
3/2	2/17	1/12	3/10	1/15
4/7	3/6	1/19	3/15	1/16
5/8	3/7	1/20	3/16	1/17
5/14	3/11	1/22	3/22	1/31
7/18	10/17	2/3	10/12	2/2
7/19	11/20	2/6	10/13	2/3
9/15	11/21	2/7	11/22	2/4
12/19	11/26	2/10	11/29	2/5
12/21	12/15	2/17	12/6	2/9
12/22	12/16	2/18		2/10
	12/21	3/21		2/13
	12/22	4/8		2/14
	12/23	5/7		2/15
	12/30			